

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.2621 of 2006

DATE OF ORDER: 13.2.2007

Shiv Dev Singh

...Petitioner(s)

Versus

Satya Parkash Gupta

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Padam Jain, Advocate.

Mr. Amarjit Markan, Advocate.

M.M. AGGARWAL,J

Shiv Dev Singh present petitioner had filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act for ejectment of respondent Satya Parkash on the allegation that Satya Parkash was tenant in the shop and that Shiv Dev Singh was non-resident Indian, who had gone to Canada to earn his livelihood and has returned to India permanently and intends to do his own business in India and bonafidely required the premises for his own use and occupation.

In this petition, tenant had filed an application for leave to contest, which was allowed vide impugned order dated 21.3.2006 by the

Rent Controller, Phillaur on the ground that the landlord-petitioner was just a co-owner and had alleged that the shop in question had fallen into his share by way of family settlement and this family settlement requires to be determined and rent receipts placed on record were also issued some time by Jagdev Singh and it was to be determined as to whether Shiv Dev Singh or Jagdev Singh was landlord, which was triable issue.

Copy Annexure P-4 shows that Satya Parkash had executed rent note dated 9.10.1986 in favour of Shiv Dev Singh. Rent was fixed at Rs.1200/-. The shop measured 18' x 22'.

It appears that thereafter the shop was expanded and another rent note Annexure P-5/A was executed by Satya Parkash in favour of Shiv Dev Singh on 6.1.1998 of shop measuring 35' x 18' at the rate of 2100/- per month. Hon'ble Supreme Court in judgment reported in Baldev Singh Bajwa v. Monish Saini, 2005(2) RCR 480 had settled the law on this issue in para No.26 as under:

“ When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to India with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him,

which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words “return to India” under Section 13-B of the Act denote return to India permanently.”

In the affidavit filed by respondent-tenant for permission to contest, it had been stated that the petitioner was not exclusive owner of the shop and was not non-resident Indian and had not returned to India and that he had not let out the property himself and the property was not required for his own use and that he was not owner of the property for the last five years and entire property was comprised in Khasra No.1093. It has not been partitioned between the co-owners.

In the present case, the rent notes are of more than five years old and these are in favour of present petitioner Shiv Dev Singh. Even if he is co-owner, he shall have to be treated as owner qua the tenant as far as this petition under Section 13-B of the East Punjab Urban Rent Restriction Act is concerned. Petitioner had produced documents showing that he is Canadian citizen and that he had been given visa to come to this country. In the petition, he had pleaded that he is non-resident Indian, who had gone to Canada to earn his livelihood and returned to India permanently and that he intended to do his own business in India. He had also pleaded about the two rent notes.

In this case, it would not be necessary that NRI-landlord should be exclusive owner especially when the rent notes are in his favour and he is admitted as co-owner. Tenancy itself is more than five years old. It shall

have to be presumed that he is owner of the property for the last more than five years before the institution of the proceedings. Even returning to India temporarily may be sufficient. He is entitled to get one property vacated and his need shall have to be taken bonafide. The tenant would have been entitled to contest only if he could make a strong case. In this case, no strong case was made by the tenant-respondent to challenge the grounds of eviction taken under Section 13-B of the Act by the present petitioner.

Under these circumstances, this petition is accepted. Application for leave to defend stands dismissed. Let Rent Controller now take further appropriate action in accordance with law.

February 13 , 2007
manoj

(M.M. AGGARWAL)
JUDGE